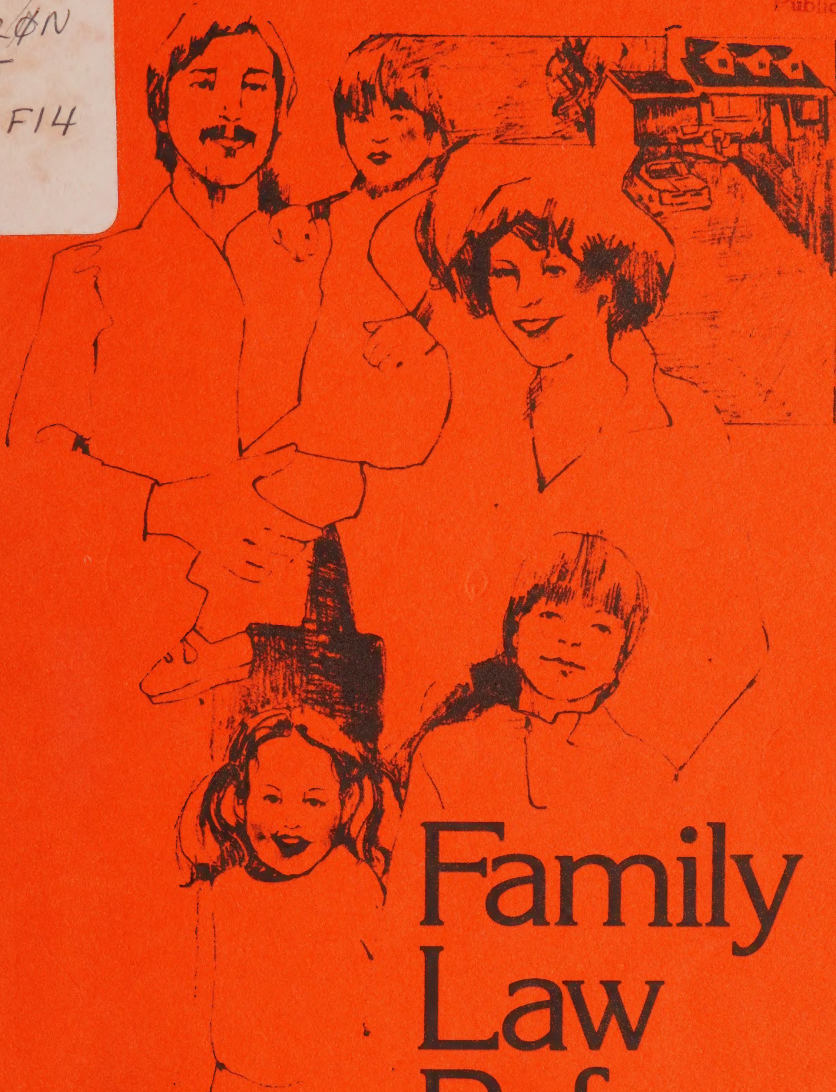


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Family Law Reform

Your new rights



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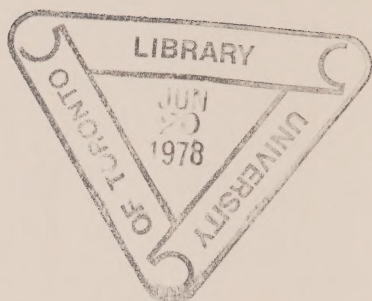
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Family Law Reform



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Foreword

The Ontario government's new family law reform legislation is now in effect after a decade of study, consultation with the public and debate in the Legislature.

The legislation is important to every person in the province because it replaces outmoded legal concepts with an improved set of rules governing family relationships.

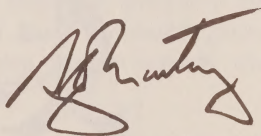
It recognizes marriage as an equal partnership in view of the mutual contribution of the spouses to the welfare of the family, including the previously undervalued contribution of the full-time homemaker. It assures the family shelter by giving special protection to the matrimonial home and assures spouses of an equitable division of their property and possessions in the event that their marriage breaks down.

The new legislation also removes inequalities which existed under Ontario's old laws of support. It obliges every spouse to provide support for himself or herself and for the other spouse in accordance with their respective needs and means. It makes both spouses responsible for the support of their children.

The legislation extends the rights and obligations of couples who live in common law unions and it improves the status of children by abolishing the legal concept of illegitimacy. All children are given equal rights before the law regardless of whether they were born within or outside a marriage.

These new family laws are intended to encourage and strengthen the role of the family in society. However, because no one set of rules can ever be acceptable to everyone, the legislation also provides for the creation of domestic contracts by persons who want to make their own agreements.

Your new rights and responsibilities are explained in detail in this booklet. I hope you will find it a useful aid to understanding them.

A handwritten signature in black ink, appearing to read 'R. Roy McMurtry', is positioned above the printed name.

R. Roy McMurtry
Attorney General for Ontario



The Family Law Reform Act

PROPERTY

Ownership During Cohabitation

The system of property which governs family property rights in Ontario while spouses live together is known as a system of separate property.

Under this system, each spouse continues to own separately property that belonged to him or her before the marriage. Generally, goods and lands purchased during the marriage belong to the party who paid for them. Property acquired during the marriage, such as earnings, gifts, or inheritances, remain the property of the spouse who acquired it.

Under the new Family Law Reform Act, the separate property system continues to apply while spouses live together. But if the marriage breaks down, either spouse is entitled to have the family assets divided according to the rules explained below.

Marriage Breakdown: The Previous Law

Depending on how a couple chose to divide the homemaking and earning tasks, the system of separate property often resulted in hardship when a marriage ended in divorce or the spouses separated. In the traditional marriage where the husband was the breadwinner and the wife managed the household and cared for the children, the husband kept his earnings and whatever property he accumulated if the marriage terminated. The wife almost always had nothing because she had neither earnings nor savings of her own. If a wife had earnings which were spent on family

vacations or consumables, the law also failed to recognize this contribution to the family, and she was still left without a share of family property.

The New Law: The Family Assets Property System

After several years of study and consultation with the public, the government has chosen the Family Assets Property System as the method generally most suited to govern property relations between husband and wife in Ontario.

Under the new law, a wife's contribution as a homemaker and mother will no longer be taken for granted and undervalued when a marriage breaks down. The new law recognizes that a homemaker's managerial skills give her husband more freedom to function effectively in his occupational role outside the home, and recognizes the mutual contribution of the spouses to the welfare of the family.

In the event of marriage breakdown, the law presumes that both spouses have an equal right to share in any property which is a family asset, regardless of which spouse owns it.



Family Assets: What Are They?

Family assets are those assets owned by one or both spouses which are ordinarily used by the spouses or the children for shelter or transportation or for household, educational, recreational, social or aesthetic purposes. Normally, this will include the matrimonial home, cottage, car and other household items.

Included in this definition is money in an account with a savings institution where the account is normally used for family purposes.

Also included is the value of the benefit derived from assets which, although owned by a corporation or trust, would be family assets if owned by a spouse.

For example, a “company car” provided by a company in which a spouse owns shares is a family asset if it normally is used for family transportation as well as for business purposes. In the event of a marriage breakdown, the value of the benefit of the car would be determined and shares in the company owned by the spouse of an equivalent value would be included in the division of total family assets.

A house or other property registered in the name of one spouse’s business also is a family asset if it is used by both spouses or their children.

Judicial Discretion In The Interest Of Fairness

A marital property system based on an undisputable fifty-fifty split of assets might sometimes result in an unfair property division. Although the family assets approach begins with a basic rule of equal sharing, it allows a judge to depart from this rule if it appears just to do so.

Specific legislative guidelines are given the court to assist it in determining the division of property on the basis of fairness.

For example, if a matrimonial home was owned prior to the date of marriage and the marriage survived only a short period of time, the court, taking into consideration the date the house was acquired and the length of the marriage, will adjust the division of family assets accordingly.

Other considerations are whether the asset was acquired by gift or inheritance, and any other circumstances relating to the acquisition, disposition or use of property.

If one spouse has unreasonably impoverished or squandered the family assets, or if a fifty-fifty division of the family assets would not result in equality, the court also has discretion to order that property which is not a

family asset be shared. The extent of sharing of non-family assets will vary from case to case.

For example, the court might order the sharing of stocks and bonds owned by one spouse in the event that the investments were purchased shortly before the marriage breakdown with proceeds of the sale of the family cottage or other family asset.

Transfers Of Property

Until 1975, the law presumed that a husband who put property in his wife's name intended to make a gift to her. However, if a wife transferred property to her husband, it was presumed the husband only held it in trust for her.

The legislation was amended in 1975. The law then presumed, unless the contrary was shown, that when *either* spouse put property in the other's name, he or she intended the property to be held in trust. The Family Law Reform Act, 1978, retains the presumption of trust.

Business Assets

The family assets system does not subject business property to automatic sharing. It leaves each spouse free to engage in a business without having





to obtain the other spouse's concurrence in individual transactions. Individual initiative exercised in building up a successful business is recognized.

At the same time, the court, after considering the statutory guidelines, has authority to order that one spouse receive a share of property that is not a family asset, including business assets. This could be done if, after examining circumstances relating to the acquisition, preservation, maintenance, improvement and use of the assets, the judge feels it is just to do so.

In addition, a spouse who has actually participated or worked in a business owned by the other spouse has a right to claim for an interest in the business or for compensation for contribution at any time, either while the spouses are living together or after the marriage breaks down, including after divorce. The same rule applies in respect to contributions in work or money to other assets, such as stocks or collector's items, which are not family assets.

Kinds Of Orders

The court has authority to declare ownership or a right of possession; direct that title to a specified property in the name of one spouse be transferred to, or put in trust for, or vested in the other spouse absolutely, for life, or for a term of years; order either spouse to pay compensation for the interest of the other spouse where property has been disposed of, or for the purpose of adjusting the division; order partition or sale of property and that payment be made out of the proceeds of sale to one or both spouses in specified proportions or amounts; order that property

forming part of the share of either or both spouses be transferred to, or put in trust for, or vested in a child to whom a spouse owes an obligation to provide support; or order that either or both spouses give security for the performance of an obligation imposed by court order, including a charge on property.

Application Of The New Act

The property provisions apply to persons who are now married, even if they were married in another province or country and even where a couple has started or completed a proceeding before March 31, 1978, to claim ownership of property.

The rules for dividing family assets do not apply to couples who are already divorced or who are living together but not married to each other.

Freedom Of Choice

Any system for sharing property must be designed with the average couple in mind. Couples who do not want the family assets system to govern their relationship can, by mutual consent, agree to other systems of property ownership and management by entering into a marriage contract or, if they are separated, a separation agreement. (See Domestic Contracts, pages 26 and 27.)



SUPPORT OBLIGATIONS

The Old Law

Only wives could claim support under provincial law, and only a woman could oblige a spouse to pay her debts for the necessities of life. Men did not have these rights. A woman who was working or able to contribute to her child's support could not generally be obliged to do so under provincial law. Only fathers were obliged to contribute to the support of a child. These laws clearly discriminated against men.

Ontario's old law of support during marriage took an inflexible position on marital misconduct. If a husband committed a single act of adultery, his wife was entitled to support for life and a judge had no discretion to refuse support. If a wife committed a single act of adultery, even if she had been driven out of the home by her husband's cruelty, she was no longer entitled to support, and a judge had no discretion to award support.

Support For Spouses Under The New Law

Under our constitution, each province has control over rights of support between spouses. But the federal government has exclusive jurisdiction over the right to get a divorce, and over support orders as part of a divorce decree. This means that Ontario's new law will not apply to persons who raise the question of support as part of their divorce case. Their rights will be determined under the federal Divorce Act.

Who Is A Spouse?

Of course, a spouse is a person who is married, but the new Ontario law also includes as spouses persons whose marriage can be annulled. A marriage may be annulled, for example, if one of the parties is already married to someone else, or if one spouse is unable to consummate the marriage.

The new law also covers persons whose marriage is polygamous, if they were married in a country which recognizes their marriage as valid. For example, if a man and his two wives come to Ontario from a country where polygamous marriages are allowed, all three parties will have rights under the new Act, including the right to claim support from one another.

Common Law Spouses

Persons who live together as husband and wife are frequently known as common law spouses, although no such term is used in the new law or in

law generally. If they have lived together continuously for five years, or if they have lived in a relationship of some permanence and have had a child of their union, a man and a woman who have cohabited within the year preceding a support application will be considered spouses. This is so even though they are not married to each other, and even if one or both of them is already married to someone else.

Common law spouses do not have any rights or obligations under this law in respect of the sharing of property or possession of the family home.

The Obligations: Self Support And Mutual Support

The new law declares that each spouse has an obligation to provide support for himself or herself, to the extent that he or she is capable of doing so. This does not mean that every married person who is not earning his or her own salary must go out and seek a job. Spouses remain free to make informal arrangements on how they will share the responsibilities of looking after their family during their marriage.

If they wish, they may make a formal marriage contract either before or during their marriage, or a cohabitation agreement if they are living together. (See Domestic Contracts, page 26.)

The obligation to support oneself simply means that if the spouses separate, each spouse will be expected to fend for herself or himself as soon as reasonably possible.

The new law also requires each spouse to contribute to the support of the other spouse, in accordance with need, to the extent he or she is capable of doing so. This does not require every husband or wife to begin paying an allowance to the other. It does mean that spouses may look to each other for support if they are unable to meet their own real needs, for example, if one spouse is remaining at home full time to care for the children.

This obligation may be enforced by an application to court during cohabitation or after the spouses separate. The application must be made before the marriage is terminated in divorce.

Since the law draws no distinction on the basis of sex, it is now possible for a husband to obtain support from his wife or a wife to obtain support from her husband. The means and needs of each of the spouses will determine whether a support order will be granted.

Support For Children

The old law did not generally require parents to support their child

beyond the age of 16, or 18 if the child was in full-time attendance at school. The only exception was a support order on divorce, which could provide for a child beyond the age of 18.

The new law requires both parents to provide support and education for their children in accordance with the needs of the children. This is so whether the child is born within marriage or outside marriage. The obligation continues until the child reaches age 18 or marries.

However, if a child of 16 years or older withdraws from parental control, the parents are not obliged to support that child. On divorce, the federal Divorce Act still permits a court to order support for a child over 18 if the child is still in the parents' charge and is unable to provide for himself or herself.

Support For Parents

Under the old law, a parent was entitled to claim support from his or her children if the parent was unable to meet his or her own needs. The new law continues this right, but provides that support can be claimed only from a child over 18 and only if the parent has in the past cared for or provided support for the child. The child is liable to support the parent in accordance with the parent's needs and the child's capabilities. If a child has a family of his or her own, the court hearing an application by a parent



will bear this in mind in determining whether to make an order for the parent's support.

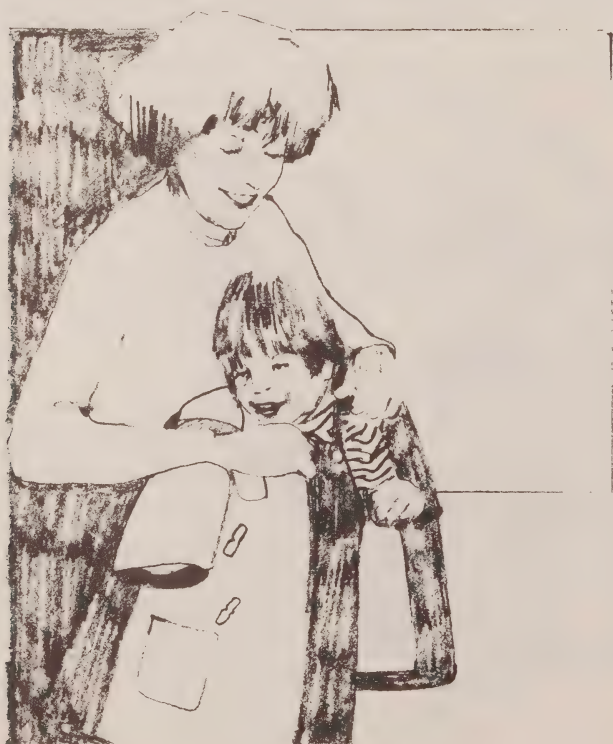
Making An Application For Support

A person in need of support may apply to the Provincial Court (Family Division), the Unified Family Court in Hamilton-Wentworth, the County or District Court or the Supreme Court of Ontario.

An applicant is free to choose any of these courts, but the choice will depend in part on which court is closest to the applicant's home. In addition, it would not be wise to apply for support in the Provincial Court (Family Division) if the applicant wants to claim a share of property as well, because the Provincial Court cannot hear property cases.

When applying to the County or District Court or the Supreme Court, it is best to hire a lawyer, as these courts have more technical and formal procedures than the Provincial Court (Family Division).

If the applicant is under 18 and unmarried, the County or District and Supreme Courts require an adult person, called a next friend, to conduct the application for the applicant.



If the address of a person from whom support is to be claimed is not known, the court can order any person having knowledge to disclose the address.

If a municipality or the Ministry of Community and Social Services is providing an allowance or benefit for the support of a dependent spouse, the agency can make an application for the dependant. In that case, the agency is in control of the application and the dependant will be no more than a witness at the hearing.

Spouses can settle their support rights in a domestic contract (see page 26) but the contract will not necessarily prevent a support application from being made. The court can set aside a support provision in a domestic contract if the provision results in unconscionable circumstances or in a spouse becoming eligible for support from public funds, or if the contract has not been honoured by the spouse responsible for making payments under it.

For example, two spouses draw up a domestic contract containing a provision which limits their liability to support each other to \$500 a month. Ten years later, the wife suffers a stroke and is unable to work. The husband deserts her and refuses to pay more than \$500 a month towards her support, despite the fact his monthly income is \$4,000.

In such a case, the court might rule that the contract's support provision was resulting in unconscionable circumstances and order the husband to make higher support payments.

When making a support application, the applicant must file a financial statement and the other party must do the same. If the other party attempts to leave Ontario, the court can have him or her arrested in order to make sure he or she is present to respond to the support claim and to obey any order the court may make.

When The Application Comes To Court

Under the old law, an application for support of a parent or child was judged almost entirely on need. A wife, however, had to prove that her husband was guilty of adultery, cruelty or desertion, and that she was not.

The new law directs the court to focus on the needs and means of both parties in all support applications. It contains a list of specific factors for the court to consider in deciding whether support should be paid and in what amount.

These factors include the assets and means of both parties, the capacity of the dependant to provide for his or her own support or to become financially independent, the ability of the respondent to pay support, the ages and physical and mental health of both parties and the desirability of one of the parties remaining at home to care for a child.

Other factors are the length of time the parties cohabited and, where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities he or she assumed during cohabitation. The court will take into account any contribution by the dependant towards the career potential of the respondent.

The court also will consider whether the dependant has any other means of support, other than from public funds, and any legal obligation on the respondent to provide support for a third party.

The conduct of a spouse making an application for support is only a factor where it is a course of conduct so unconscionable as to be a gross and obvious repudiation of the relationship. Then it may affect the amount of support that would otherwise have been awarded.

For example, the conduct of a financially dependent man who has continually brutalized his well-paid career wife would be taken into account by a court hearing his application for support from his wife.

The old law did not allow a court to order transfers of property to satisfy a support claim, and lump sum awards were available only on divorce. Now the court is able to order periodic payments either indefinitely or for a specified time. It may also order lump sum payments, transfers of property, possession of the matrimonial home for a spouse, the



designation of a spouse as irrevocable beneficiary of a life insurance policy or any form of security needed to ensure that a support order is honoured. The court will also be able to restrain a spouse from disposing of assets in an attempt to defeat a support claim or from harassing the other spouse and children.

Provisional Orders In Family Court

If the person from whom support is claimed does not live in the same area as the applicant, a Provincial Court (Family Division) or the Unified Family Court in Hamilton-Wentworth can make a provisional order. This order has no effect until it is sent to and confirmed by the court where the other party lives. That court will notify and hear evidence from the other party, and can then confirm the original order or confirm it with variations. The order is then enforceable.

This procedure is also available for sending orders outside Ontario for enforcement, and it is used by other provinces and countries in sending their support orders to Ontario for confirmation.

Termination And Variation Of Orders

A support order expressed to continue until a certain date or event terminates automatically at the specified time. An order for support for the life of a dependant will continue even in the event of the death of the person making payments, with the payments being made out of that person's estate.

Otherwise, however, a support order continues until one of the parties dies, unless a divorce court is asked to determine the issue of support or the parties obtain a variation of the order.

A variation may be obtainable if the circumstances of either party change or if new evidence becomes available that was not available on the previous hearing. A variation cannot be obtained within six months of a previous hearing without special permission of the court.

Enforcement Of Support Orders In Family Court

Under our law, the primary responsibility for enforcing a support order lies with the person in whose favour the order is made. Nevertheless, the Unified Family Court in Hamilton-Wentworth and the Provincial Court (Family Division) in most areas will assist a dependant in enforcing a support order.

An order made in any Ontario court may be taken for enforcement to the

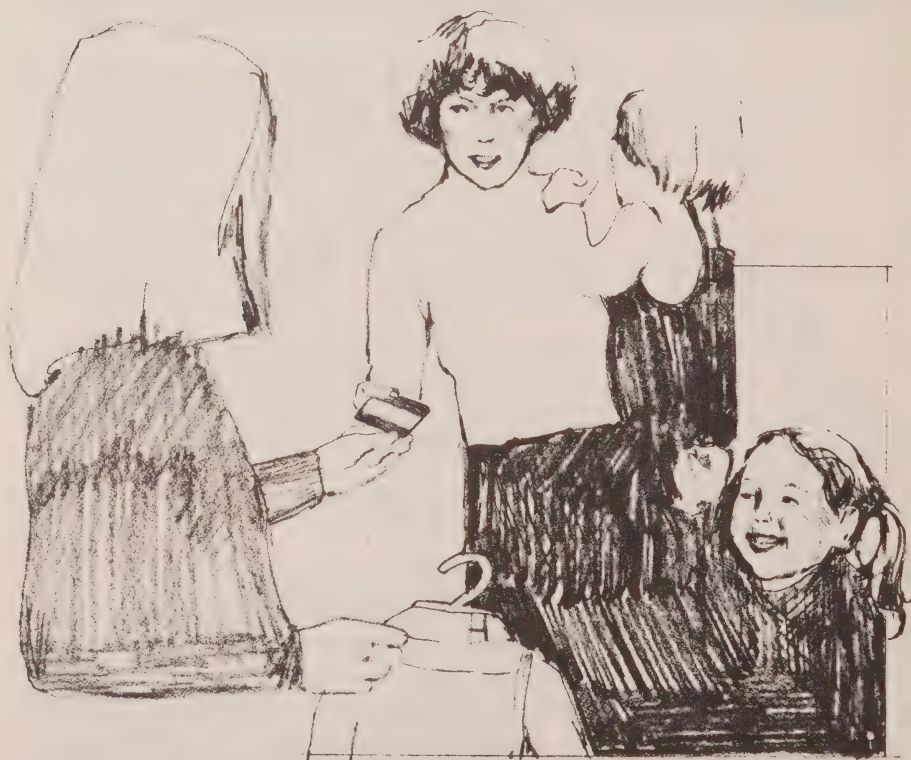
Unified Family Court in Hamilton-Wentworth or the Provincial Court (Family Division) where the debtor lives. If the debtor fails to make payment, the court can require the debtor to file a financial statement, submit to an examination of assets and means and appear before the court to explain the default. If the judge is not satisfied that the default was due to inability to pay, the debtor may be imprisoned for up to three months.

Where the debtor has been required to appear and explain a default, the court can also order that future support payments be deducted automatically from his or her wages and sent directly to the court. This is called an attachment of wages. The court can also require the debtor to give security for future payments.

Support orders made outside Ontario may be sent to Ontario if the debtor lives here and may be enforced in the same way. Similarly, Ontario orders may be sent to other provinces and countries for enforcement.

Remedies Available In All Courts

All courts have power to authorize the sheriff, under a writ of execution, to



seize property of a person who has defaulted on a support order. In addition, the wages of the debtor can be seized by garnishment. If a court has ordered security for payments under a support order, it can order the security sold in order to cover payments that have not been made.

Pledging Credit

Under the old law, a wife was able to use her husband's credit to buy necessities for her and the children. This was called pledging credit for necessities.

The new law extends this right to husbands as well as wives, and makes both husband and wife liable to pay for the goods or services supplied. A spouse may not pledge the other spouse's credit where the supplier has been notified that the other spouse will not be responsible for the debt. The responsibilities between the husband and wife will be determined in accordance with the needs and ability of each to pay.

In addition, a supplier who provides necessities to a minor is now entitled to look to the parents of the minor for payment, as well as to the minor.

These provisions are available only where the goods or services are truly necessities of life. If the supplier of goods or services is unwilling to accept the spouse's credit, other arrangements for payment will have to be made.

THE MATRIMONIAL HOME

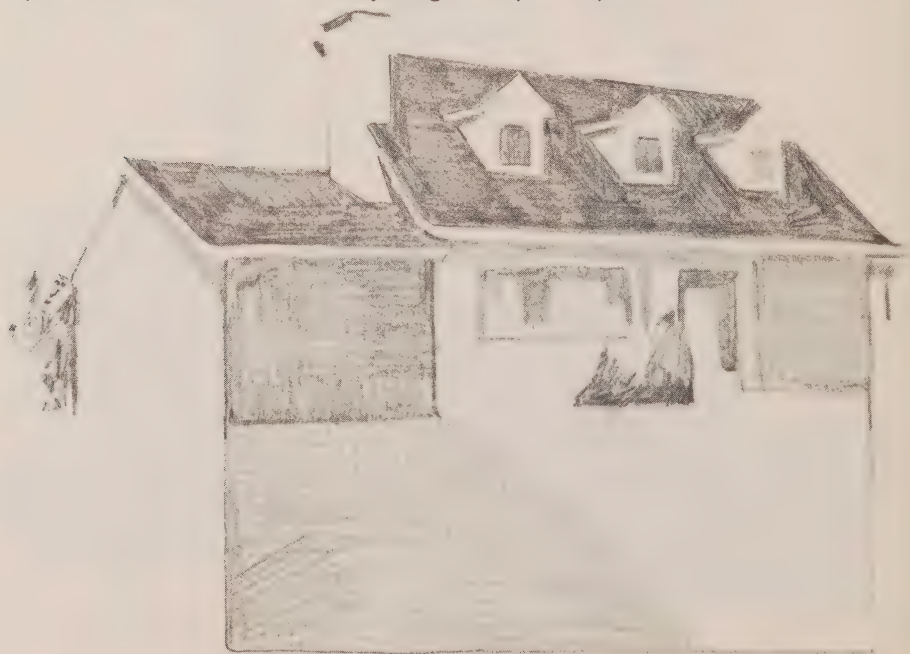
Dower

The dower right was the right of a wife, upon her husband's death, to a life interest in one third of all real property acquired by the husband during the marriage. If the husband put a mortgage on the property, the mortgagee could ask the wife to release her dower. But she could not be compelled to do so. However, if the husband purchased land in a way that avoided dower, the wife's signature was not required and she had no control over dealings with the property. Even where the wife was entitled to dower, the husband could dispose of land without her consent by paying into court a part of the sale price equivalent to the wife's dower interest. If the matrimonial home was in the wife's name, the husband had no right to control dealings with respect to the property during their life. There was no dower right in jointly-owned property. A wife lost her right to dower by committing adultery.

Under the new law, dower has been abolished and replaced by legislation giving both spouses equal rights in the matrimonial home.

Special Protection For The Matrimonial Home

Under the Family Law Reform Act, the matrimonial home, as the focal point of shelter for the family, is given special protection.



This protection is not limited, as dower was, to wives. Now both spouses have an equal right to possession of the matrimonial home during the marriage and the consent of both spouses is required to sell or mortgage the home no matter which spouse holds title to it. If one party tries to dispose of the home without the knowledge or consent of the other, a court can prevent or set aside the transaction or make an order that other comparable accommodation be provided or that the proceeds of sale be divided as the court considers appropriate. If a spouse cannot be found or unreasonably refuses to agree to a sale, the court can authorize a sale without the spouse's consent.

What Is A Matrimonial Home?

Provisions for the protection of the matrimonial home are not limited to real property. The matrimonial home can be a rented house, apartment, trailer or houseboat.

Any shelter becomes a matrimonial home if it ordinarily is used by the spouses as their family residence. It is possible to have more than one matrimonial home. For example, if a couple move from one town to another and rent out their old family residence, both the old home and their home in the new town will be considered matrimonial homes.

Freedom To Designate A Single Matrimonial Home

Where two or more properties have been the family residence, spouses may register a document designating which property will be the matrimonial home. This frees a spouse to sell or mortgage a property which otherwise would have been considered a matrimonial home without having to obtain the other spouse's consent. Both spouses' consent will still be required for a sale or mortgage of the property which has been designated as the matrimonial home.

Orders For Possession of the Home

Under the new Act, a court can order that one spouse (and the children) have exclusive possession of a matrimonial home and can specify which contents of the home may be removed by the other spouse. An order for possession will be made only if the court is satisfied that the children's best interests require it or that other suitable accommodation is not available.

DOMESTIC CONTRACTS

No single set of rules governing property rights and support obligations will satisfy the needs and expectations of all couples. One way to make the system flexible is to offer couples the choice of creating their own set of rules. Previously, a marriage contract which stated how a couple's property was to be divided or outlined their support obligations towards each other upon marriage breakdown was void. However, when two married persons were living separate and apart, they could make provision as to how their property was to be divided or a support obligation discharged.

What Is A Domestic Contract?

A domestic contract is a marriage contract, a separation agreement or a cohabitation agreement. A marriage contract may be signed before a couple marry or during the marriage. A separation agreement is signed after a couple have separated. A cohabitation agreement is an agreement between a man and a woman who are living together but who are not married to each other.

A domestic contract or any agreement to amend a domestic contract must be in writing, signed by the parties and witnessed. Independent legal advice, although advisable, is not required under the new law.

In a domestic contract, a couple may outline property rights and support obligations and provide for any other matter in the settlement of their affairs during their relationship, in the event of a future separation or upon



the death of one of them. Provisions set out in a domestic contract generally will predominate over the new legislation.

However, a court can set aside any support provision in a domestic contract if it results in unconscionable circumstances or in a spouse becoming eligible for welfare.

Also, any provision in a marriage contract whereby a spouse relinquishes his or her possessory right in the matrimonial home, or the right to control a sale of the home, is void. These rights can only be given up in a separation agreement.

However, spouses may agree in a marriage contract that the proceeds of the sale of the home would belong entirely to one of them.

Couples may provide for the education or religious training of their children in a marriage contract or cohabitation agreement. Custody of children may only be provided for in a separation agreement.

Recognition Of Existing Marriage Contracts And Separation Agreements

Subject to the restrictions contained in the new law, a marriage contract entered into outside Ontario will be recognized in Ontario if it complies with the requirements of the jurisdiction where it was made or if it complies with Ontario law.

Separation agreements entered into before the coming into force of the new law are also preserved. The new law will also not affect transfers of property made before March 31, 1978, from one spouse to another where they were made to carry out an informal settlement on a marriage breakdown (that is, where the spouses reached an agreement but did not sign a separation agreement).

GHOSTS OF THE COMMON LAW

Much of Ontario's law stems from decisions of the courts rather than from federal or provincial government statutes. It includes decisions of English courts, some of them centuries old. This judge-made law is known as common law.

Common law rights allowed a spouse to sue a person who had caused him or her to lose the services of the other spouse, for example, by negligently injuring the other spouse or by enticing the other spouse to leave the family home. The right to sue also was available when someone deprived the family of the services of one of its children, either by injuring the child or by persuading the child to leave home.

These rights were based on the theory that a husband owned the services of his wife or that a parent owned the services of his or her child. It is generally agreed that this kind of theory has no place in modern society. Accordingly, the old rights to start a law suit for depriving a family of the services of a spouse or child are abolished by the new legislation. These rights to sue are known by the technical names of criminal conversation, enticement, harbouring, seduction, loss of services and loss of consortium.

The Remedy For Injuries To Family Members

If the right to sue for loss of services and loss of consortium was simply abolished, some damages incurred by family members would not be compensated for under the common law.

For example, if a married couple and their child were injured in a car accident because of the negligence of a third party, the father previously had several courses of action against the wrongdoer. Under the old law, he could claim for loss of earnings, medical expenses and other non-pecuniary claims for his injuries, and for the loss of his wife's services and consortium, and for medical and increased living expenses incurred on her behalf. His ability to recover his wife's medical expenses arose from his obligation under the law to support her.

Families will continue to be able to recover medical, living and visiting expenses incurred when one of their members is injured by a wrongdoer. The English Law Commission and Ontario Law Reform Commission suggested an action for any financial loss, including loss of financial benefits a spouse or child could reasonably be expected to have conferred if injury had not occurred, and the monetary loss of paying for services which would otherwise have been free. The Commission based its recommendation on the structure of The Fatal Accidents Act, saying that an injury causing financial loss which is actionable when it results in

death should be actionable on exactly the same basis if it does not result in death.



The New Action

The new action parallels The Fatal Accidents Act. Where a person is injured or killed by the fault of another, the family members of the injured person are entitled to recover their resulting loss from the person who caused the injury. The family members entitled to sue under this act are the victim's spouse (including a person entitled under the new law to support as a common law spouse), children, grandchildren, parents, grandparents, brothers and sisters.

If the victim is killed, the law suit will normally be brought by the executor or administrator of the estate, on behalf of the persons entitled. If there is no executor or administrator, or if the executor has not taken action within six months of the death, any of the family members entitled to damages may bring the action, but he or she must do so on behalf of all other family members who are entitled. The action must be brought within two years of the injury.

If the victim is killed, the wrongdoer is liable to pay reasonable funeral expenses for the deceased, as well as compensation for any financial loss of surviving family members. However, if the victim's own fault

contributed to his or her injuries, the recovery of the family members will be reduced in proportion to the victim's negligence. If the victim had an insurance policy covering the injury, the insurance proceeds will not reduce the entitlement of family members to damages.

Status Of Married Women

The old law regarded married women as dependent on their husbands in many ways. In particular, the law considered a husband and his wife as one person for many purposes, and that person was generally the husband. This meant a women could not claim against her husband, nor could a man claim against his wife, for injuries that either inflicted upon the other. It also meant that a married woman was incapable in law of conducting a law suit for a person under 18.

In 1975, the government abolished the legal disabilities of married women. The provisions of the 1975 legislation are included in the new law. It declares that, for all purposes of Ontario law, married men and women have legal personalities that are independent, separate and distinct from that of their spouses. Husbands and wives are now entitled to sue each other for injuries to their person or property and married women are entitled to conduct legal proceedings for minors. The law now applies equally to married men and married women.

Married Woman's Domicile

In legal terms, a person's domicile is generally speaking the jurisdiction which is his or her permanent home. Domicile can be very important because it determines under what system of law a person's estate is distributed on death or what jurisdiction's matrimonial property system controls the economic relationship between a person and his or her spouse.

Under the common law, a married woman was considered incapable of acquiring a domicile of her own. She shared the domicile of her husband throughout her married life, because the common law regarded a married couple as one person (the husband), even when the marriage broke down and the spouses separated. Even if the husband remained in the matrimonial home in Australia, for example, and his wife and children moved to Canada, the wife and children were deemed to be domiciled in Australia. The children were deemed to have the same domicile as their father, even if they lived with their mother and their father lived in a country which they had never seen.

The new act declares that a married woman is capable of acquiring her own domicile in the same way as a married man. In addition, a minor who

is or has been married is also capable of acquiring an independent domicile. An unmarried minor takes the domicile of his or her parents, where the parents live together, or the domicile of the parent with whom the child habitually resides, when they do not live together.

Dower

Dower has been replaced by provisions of the new law which give spouses equal rights of possession of the matrimonial home and control over dealings with it (see page 24) and a fair share of matrimonial property if their marriage breaks down. Accordingly, the new law abolishes the ancient right of dower.

However, where a husband died before March 31, 1978, his widow is still entitled to take her dower if she chooses. But if a husband dies after that date, the rights of his widow will be determined under the new Act and The Succession Law Reform Act, 1977. Where money has been paid into court to cover a potential dower claim, the husband is entitled to have the money paid out to him on or after March 31, 1978.

Alimony

Alimony is commonly used to describe periodic support payments either during marriage or after divorce. However, it is incorrect to refer to support payments after a divorce as alimony because the technical legal meaning of the word includes only support payments ordered by a court during marriage.

The new support rights of husbands and wives provide a far more complete and effective support scheme than the old law of alimony. Accordingly, alimony is abolished by the new Act.

Where a wife has started an alimony action before March 31, 1978, and the trial has not yet begun, the action will be converted into an application under the provisions for support in the new law. If the trial of the alimony action has begun before March 31, 1978, the action will continue under the old law.

The Marriage Act

As part of the Ontario government's family law reform program, a new Marriage Act has been passed by the legislature. Under the new law, a person who is 18 years old or more may obtain a marriage licence without his or her parents' consent, but a person who is 16 or 17 must have the consent of both parents unless there is a judge's order dispensing with parental consent. A person under 16 may not marry in Ontario.

Persons who wish to have a non-religious marriage ceremony may have the ceremony performed by a judge or by a justice of the peace who has been authorized to perform marriages. Court offices and municipal offices will have the names of justices of the peace who are authorized to perform civil marriage ceremonies.

The Marriage Act also abolishes the right to sue for breach of promise to marry.

The Succession Law Reform Act

The law of succession is concerned with the distribution of property on the death of the owner. The Succession Law Reform Act contains the rules for making wills, the rules for what happens when a person dies without a will and other matters relating to estates.

Unless an application has been begun under The Family Law Reform Act while both spouses are alive, their rights cease to be governed by that act when one of them dies. Instead, The Succession Law Reform Act determines what becomes of the property of a deceased spouse.

Holograph Wills

In general, if a person dies leaving a will, the provisions of the will govern distribution of the estate. It is now possible to make a will in either of two ways. The traditional way requires two witnesses to the signature of the person making a will. In addition, The Succession Law Reform Act allows Ontario residents to make holograph wills. A holograph will is a will written entirely in the handwriting of the person making it, and it does not require any witnesses.

Intestacy

A person who dies without leaving a will is said to have died intestate. On an intestacy, the law determines that the deceased's spouse receives at least the first \$75,000 from the estate and, if there are no children, the surviving spouse receives all the estate. If there is one child, the surviving spouse receives the first \$75,000 and shares any remainder equally with the child. If there are two or more children, the surviving spouse receives the first \$75,000 and one third of any remainder, with the rest going to the

children. If there is no surviving spouse or child, more distant relatives inherit.

If the the deceased has left a will which deals only with part of the estate, the surviving spouse takes whatever benefits the will provides him or her, plus an amount from the estate that brings his or her share up to \$75,000. He or she also receives a share of the rest of the estate if it is not disposed of by the will.

Children

The Succession Law Reform Act treats all children the same, regardless of whether they were born within a marriage. There is no longer such thing as an illegitimate child under Ontario law. So if a person dies intestate after March 30, 1978, all that person's children, whether born within or outside marriage, will inherit equally.

Similarly, any reference to children in a will made after March 30, 1978, will be deemed to include children born outside marriage, unless the will specifically states that they are not to be included.

Support For Dependants

If a will does not make adequate provision for the support of the deceased's dependent spouse, parent, child, brother or sister, or if the deceased did not leave a will and the law does not make adequate provision for one of those persons, the dependant can apply to a court for a greater share of the estate.

For support purposes under the Family Law Reform Act, spouses include persons living together outside marriage for a period of at least five years or in a relationship of some permanence where they have a child. The same definition applies with regard to support provisions under the Succession Law Reform Act. Also, a child of the deceased born outside marriage is eligible to claim support from the estate and is treated in the same way as a child born within marriage.

In order to be eligible to claim support from an estate, the dependant must have been receiving support from the deceased immediately before his or her death, or the deceased must have been under a legal obligation to provide support to the dependant. The application must be made to the surrogate court having jurisdiction to appoint a person to administer the deceased's estate.

This legislation applies in respect of deaths occurring on or after March 31, 1978. Where the deceased died before that date, the dependant may still have rights under an old law known as The Dependants' Relief Act.

An application for a greater share of an estate should be made within six months of the deceased's death.

The Children's Law Reform Act

No aspect of family law reform has had more support than the proposal that all children should have equal legal status, regardless of whether they were born within or outside marriage. The people of Ontario realize that it is indefensible to deprive children of their legal rights because their parents did not get married. The Children's Law Reform Act does away with the notion of illegitimacy in Ontario law.

The Old Law

Under our common law, a child born outside marriage had no rights at all and was regarded as the "child of no one". References to a child in our legislation or in documents such as wills were deemed to include only a legitimate child, unless it was specifically stated that a child born out of wedlock was to be included.

Over the centuries, children born outside marriage came to have a few specific rights, such as the right to financial support from their father, but the basic prejudice against these children remained. The most notorious disability of children born outside marriage was that they had no inheritance rights, even if they had always lived with their parents as a family.

Reform

The Children's Law Reform Act declares that for all purposes of Ontario law a person's rights will be determined independently of whether or not his parents were married. As far as the law is concerned, there is no such thing as an illegitimate child.

This does not mean that there can be no difference between children born within marriage and children born outside marriage.

For example, persons who disapprove of their child being a parent of a child born outside marriage may direct in their wills that only their grandchildren born within a marriage should inherit.

The old law has been turned around. Under the old law, children outside marriage had no rights unless they were specifically given; under the new law a child born outside marriage has the same rights as any other child unless they are specifically taken away.

Both The Family Reform Act and The Succession Law Reform Act specifically recognize the equal rights of children born outside marriage.

Establishing Parentage

Under Ontario's new laws, a child's rights, for example the right to financial support from his or her father, are dependent on the simple fact of a parent-child blood relationship.

However, where a child is born out of wedlock it may be difficult to prove that a certain man is that child's father. For this reason, the Children's Law Reform Act identifies a number of circumstances in which it is reasonable to presume that a man is the father of a child, unless the contrary is proven. These circumstances, or "presumptions of paternity" are as follows:

1. The man was married to the mother of the child when the child was born.
2. The man was married to the mother of the child within 300 days before the child was born.
3. The man married the mother of the child after the child was born and has acknowledged that he is the father of the child.
4. The man was living with the mother in a common law relationship of some permanence when the child was born or the child was born within 300 days after they ceased living together.
5. The man and the mother have followed the procedures under the Vital Statistics Act to have the man registered as the father.
6. The man has been found in previous court proceedings to be the father of the child.

Declarations of Parentage

Because a presumption of paternity is always open to challenge, and because there may be some cases where it would be desirable to establish

the paternity of a child once and for all, the new law provides a mechanism for applying to the Supreme Court of Ontario (or the Unified Family Court in Hamilton-Wentworth) for a declaration of parentage. A declaration likely would be made only after a thorough investigation of all the facts which satisfied the court that parentage had been established. A declaratory order would then be conclusive for all purposes.

There are a few rare cases in which the maternity of a child may be in doubt; for example, where the mother uses the name of her sister when giving birth and registering the child and the child is raised by the mother's sister. Consequently, it is possible under the Act to apply for a declaration of maternity.

Blood Tests

Blood tests provide one of the simplest ways for a man wrongly accused of paternity to prove that he has not fathered a certain child.

Blood tests, however, can only prove that a man is *not* the father. They can never conclusively prove who the father is. Also, blood tests are meaningful only where it is possible to compare the blood samples of the mother, the child and the alleged father.

The taking of blood samples requires the consent of the subject, and the court has no power to compel a person to take a blood test. However, if a person refuses to submit to a court's request for a blood test, the law provides that the court may draw such inferences from the refusal as it thinks appropriate.

For example, a man who has been accused by a woman of fathering her child may try to disprove paternity by requesting blood samples from the woman and child. If the woman refuses to provide samples, then it may be reasonable for the court to infer that the woman knows the man is not her child's father. Of course, refusal will not always result in the drawing of an adverse inference. Each case must be considered by the court on all its facts.

**An Act to reform the Law respecting
Property Rights and Support Obligations
between Married Persons and in other
Family Relationships**

WHEREAS, it is desirable to encourage and strengthen Preamble
the role of the family in society;

AND WHEREAS for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership;

AND WHEREAS in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership; and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "child" means a child born within or outside marriage, subject to sections 83 and 85 of *The Child Welfare Act* (which relate to the effect of adoption), and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family, but does not include a child placed in a foster home for consideration by a person having lawful custody; R.S.O. 1970,
c. 64
- (b) "cohabit" means to live together in a conjugal relationship, whether within or outside marriage;
- (c) "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court;

(d) “domestic contract” means a domestic contract as defined in Part IV;

(e) “parent” means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, but does not include a person in whose home a child was placed as a foster child for consideration by a person having lawful custody;

(f) “spouse” means either of a man and woman who,

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year.

Combining of
application

2.—(1) Where, in an application under any provision of this Act, it appears to the court that for the appropriate determination of the affairs of the spouses it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until such other applications are brought or determined as the court considers appropriate.

All
proceedings
in one court

(2) Except as otherwise provided, where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, the court having other jurisdiction is more appropriate to determine the matters in issue that should be determined at the same time.

Applications

(3) An application under this Act may be made in the manner prescribed by the rules of the court or in another proceeding.

Capacity
of minors

(4) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and give any consent required or authorized by this Act.

Extension
of times

(5) The court may extend any time prescribed by this Act where the court is satisfied that,

- (a) there are *prima facie* grounds for relief;
- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no substantial prejudice or hardship will result to any person affected by reason of the delay.

(6) The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing. Closed hearings

(7) Upon the consent of the parties in an application under this Act, the court may make any order that the court is otherwise empowered to make by this Act, subject to the duty of the court to have regard to the best interests of children affected. Consent orders

(8) Any matter provided for in a domestic contract may be incorporated in an order made under this Act. Incorporation of contract in order

(9) Where a domestic contract makes provision in respect of a matter that is provided for in this Act, the contract prevails except as otherwise provided in this Act. Act subject to contracts

(10) Where an order made under this Act affects real property, the order does not affect the acquisition of an interest in the real property by a person in good faith without notice of the order, unless the order is registered in the proper land registry office. Registration of orders

PART I

FAMILY PROPERTY

3. In this Part,

Interpretation

- (a) “court” means a court as defined in section 1 but does not include a provincial court (family division);
- (b) “family assets” means a matrimonial home as determined under Part III and property owned by one spouse or both spouses and ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social or aesthetic purposes, and includes,

- (i) money in an account with a chartered bank, savings office, credit union or trust company where the account is ordinarily used for shelter or transportation or for household, educational, recreational, social or aesthetic purposes,
- (ii) where property owned by a corporation, partnership or trustee would, if it were owned by a spouse, be a family asset, shares in the corporation or an interest in the partnership or trust owned by the spouse having a market value equal to the value of the benefit the spouse has in respect of the property,
- (iii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself, if the property would be a family asset if it were owned by the spouse, and
- (iv) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to revoke the disposition or a power to consume, invoke or dispose of the property, if the property would be a family asset if it were owned by the spouse,

but does not include property that the spouses have agreed by a domestic contract is not to be included in the family assets;

(c) "property" means real or personal property or any interest therein.

Division of
family
assets

4.—(1) Subject to subsection 4, where a decree *nisi* of divorce is pronounced or a marriage is declared a nullity or where the spouses are separated and there is no reasonable prospect of the resumption of cohabitation, each spouse is entitled to have the family assets divided in equal shares notwithstanding the ownership of the assets by the spouses as determinable for other purposes and notwithstanding any order under section 7.

Application
to court

(2) The court may, upon the application of a person who is the spouse of another, determine any matter respecting the division of family assets between them.

Effect of
death of
spouse

(3) The rights under subsection 1 are personal as between the spouses but any application commenced under subsection

2 before the death of a spouse may be continued by or against the estate of the deceased spouse.

(4) The court may make a division of family assets resulting in shares that are not equal where the court is of the opinion that a division of the family assets in equal shares would be inequitable, having regard to, Variation
of division

- (a) any agreement other than a domestic contract;
- (b) the duration of the period of cohabitation under the marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the property was acquired;
- (e) the extent to which property was acquired by one spouse by inheritance or by gift; or
- (f) any other circumstance relating to the acquisition, disposition, preservation, maintenance, improvement or use of property rendering it inequitable for the division of family assets to be in equal shares.

(5) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to an equal division of the family assets, subject to the equitable considerations set out in subsections 4 and 6. Purpose

(6) The court shall make a division of any property that is not a family asset where, Property
other than
family
assets

- (a) a spouse has unreasonably impoverished the family assets; or
- (b) the result of a division of the family assets would be inequitable in all the circumstances, having regard to,
 - (i) the considerations set out in clauses *a* to *f* of subsection 4, and
 - (ii) the effect of the assumption by one spouse of any of the responsibilities set out in subsection 5 on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not a family asset.

Statement
of property

5.—(1) Where an application is made under section 4, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of all property of the party in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Idem

6. In an application under section 4, the court may order,

- (a) that the title to any specified property directed to a spouse in the division be transferred to or in trust for or vested in the spouse whether absolutely, for life or for a term of years;
- (b) the partition or sale of any property;
- (c) that payment be made out of the proceeds of sale to one or both spouses, and the amount thereof;
- (d) that any property forming part of the share of either or both spouses be transferred to or in trust for or vested in a child to whom a spouse owes an obligation to provide support;
- (e) that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property; and
- (f) that either spouse pay to the other such sum as is set out in the order for the purpose of adjusting the division,

and may make such other orders or directions as are ancillary thereto.

Determin-
ation of
questions of
title between
married
persons

7. Any person may apply to the court for the determination of any question between that person and his or her spouse or former spouse as to the ownership or right to possession of any particular property, except where an application or an order has been made respecting the property under section 4 or 6, and the court may,

- (a) declare the ownership or right to possession;
- (b) where the property has been disposed of, order payment in compensation for the interest of either party;

- (c) order that the property be partitioned or sold for the purpose of realizing the interests therein; and
- (d) order that either or both spouses give security for the performance of any obligation imposed by the order, including a charge on property,

and may make such other orders or directions as are ancillary thereto.

8. Where one spouse or former spouse has contributed work, money or money's worth in respect of the acquisition, management, maintenance, operation or improvement of property, other than family assets, in which the other has or had an interest, upon application, the court may by order, Contribution to property

- (a) direct the payment of an amount in compensation therefor; or
- (b) award a share of the interest of the other spouse or former spouse in the property appropriate to the contribution,

and the court shall determine and assess the contribution without regard to the relationship of husband and wife or the fact that the acts constituting the contribution are those of a reasonable spouse of that sex in the circumstances. 1975, c. 41, s. 1 (3) (c), *amended*.

9. In or pending an application under section 4, 7 or 8, the court may make such interim order as it considers necessary for restraining the dissipation of the property and for the possession, delivering up, safekeeping and preservation of the property. Interim orders for preservation

10. Where a court orders security for the performance of any obligation under this Part or charges a property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. Realization of security

11.—(1) The rule of law applying a presumption of advancement in questions of the ownership of property as between husband and wife is abolished and in place thereof the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married, except that, Presumptions

- (a) the fact that property is placed or taken in the name of spouses as joint tenants is *prima facie* proof that each spouse is intended to have on a severance of the joint tenancy a one-half beneficial interest in the property; and

- (b) money on deposit in a chartered bank, savings office, credit union or trust company in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause *a.* 1975, c. 41, s. 1 (3) (*d*), *amended*.

Application

(2) Subsection 1 applies notwithstanding that the event giving rise to the presumption occurred before this section comes into force.

Application
of Part

12. This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force;
- (b) the property in issue was acquired before this Part comes into force; or
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before this Part comes into force.

Conflict
of laws

13.—(1) The division of family assets and the ownership as between spouses of movable property wherever situate are governed by the internal law of the place where both spouses had their last common habitual residence or, where there is no place where the spouses had a common habitual residence, by the law of Ontario.

Idem

(2) The ownership of immovable property as between spouses is governed by the internal law of the place where the land is situated, but where the law of Ontario is applicable respecting the division of family assets, the value of the property may be taken into consideration for the purposes of section 4.

PART II

SUPPORT OBLIGATIONS

Interpre-
tation

14. In this Part,

- (a) “dependant” means a person to whom another has an obligation to provide support under this Part;
- (b) “spouse” means a spouse as defined in section 1, and in addition includes,
 - (i) either of a man and woman not being married to each other who have cohabited,

- 1. continuously for a period of not less than five years, or

2. in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have so cohabited within the preceding year, and

- (ii) either of a man and woman between whom an order for support has been made under this Part or an order for alimony or maintenance has been made before this Part comes into force.

15. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. Obligation of spouses for support

16.—(1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years. Obligation of parent to support child

(2) The obligation under subsection 1 does not extend to a child who, being of the age of sixteen years or over, has withdrawn from parental control. Idem

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so. Obligation of child to support parent

18.—(1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof. Order for support

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or under subsection 3. Applicants

(3) An application for an order for the support of a dependant who is a spouse or a dependent child of the spouse may be made by, Idem

(a) the Ministry of Community and Social Services in the name of the Minister; or

(b) a municipal corporation, including a metropolitan, district or regional municipality, but not including an area municipality thereof,

if the Ministry or municipality is providing a benefit under *The Family Benefits Act* or assistance under *The General Welfare Assistance Act* in respect of the support of the dependant. R.S.O. 1970, cc. 157, 192

Setting aside
domestic
contract

(4) The court may set aside a provision for support in a domestic contract or paternity agreement and may determine and order support in an application under subsection 1 notwithstanding that the contract or agreement contains an express provision excluding the application of this section,

- (a) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;
- (b) where the provision for support is to a spouse who qualifies for an allowance for support out of public money; or
- (c) where there has been default in the payment of support under the contract or agreement.

Determin-
ation of
amount

(5) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;
- (b) the capacity of the dependant to provide for his or her own support;
- (c) the capacity of the respondent to provide support;
- (d) the age and the physical and mental health of the dependant and of the respondent;
- (e) the length of time the dependant and respondent cohabited;
- (f) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;
- (h) the legal obligation of the respondent to provide support for any other person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;

- (j) a contribution by the dependant to the realization of the career potential of the respondent;
- (k) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;
- (l) where the dependant is a spouse, the effect on his or her earning capacity of the responsibilities assumed during cohabitation;
- (m) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents;
- (n) where the dependant is a spouse, whether the dependant has undertaken to assist in the continuation of a program of education for a child who is of the age of eighteen years or over and unable for that reason to withdraw from the charge of his or her parents;
- (o) where the dependant is a spouse, any house-keeping, child care or other domestic service performed by the spouse for the family, in the same way as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings therefrom to the support of the family; and
- (p) any other legal right of the dependant to support other than out of public money.

(6) The obligation to provide support for a spouse exists ^{Conduct} without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

19.—(1) In an application under section 18, the court ^{Powers of court} may order,

- (a) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;

- (c) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) any matter authorized to be ordered under clauses *a* to *d* of subsection 1 of section 45 and subject to subsection 3 thereof;
- (e) that all or any of the moneys payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;
- (f) the payment of support to be made in respect of any period before the date of the order;
- (g) the payment to an agency referred to in subsection 3 of section 18 of any amount in reimbursement for a benefit or assistance referred to therein, including an amount in reimbursement for such benefit or assistance provided before the date of the order;
- (h) the payment of expenses in respect of the prenatal care and birth of a child;
- (i) that the obligation and liability for support continue after the death of the respondent and be a debt of his or her estate for such period as is fixed in the order;
- (j) that a spouse who has a policy of life insurance as defined in Part V of *The Insurance Act* designate the other spouse or a child as the beneficiary irrevocably; and
- (k) the securing of payment under the order, by a charge on property or otherwise.

R.S.O. 1970,
c. 224

Limitation
on
jurisdiction
of family
court

(2) A provincial court (family division) shall not make an order under clause *b*, *c*, *j* or *k* of subsection 1 except for the provision of necessities or preventing the dependant from becoming a public charge.

Interim
orders

(3) Where an application is made under section 18, the court may make such interim order as the court considers appropriate.

Assignment
of support

(4) An order for support is assignable to an agency referred to in subsection 3 of section 18.

(5) Unless an order to provide support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the liability for amounts under the order coming due and unpaid in the preceding twelve months is a debt of his or her estate. Termination of support order on death

20.—(1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support or custody under this Part that has not been determined is stayed except by leave of the court. Effect of divorce proceedings R.S.C. 1970, c. D-8

(2) Where a marriage is terminated by a decree absolute of divorce or declared a nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. Idem

21.—(1) Where an order for support has been made or confirmed and where the court is satisfied that there has been a material change in the circumstances of the dependant or the respondent or evidence has become available that was not available on the previous hearing, the court may, upon the application of any person named in the order or referred to in subsection 3 of section 18, discharge, vary or suspend any term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all of the arrears or any interest due thereon and make such other order under section 19 as the court considers appropriate in the circumstances referred to in section 18. Review and variation of orders

(2) An application under subsection 1 shall be made to the court that made the order or to a co-ordinate court in another part of Ontario. Court

(3) No application under subsection 1 shall be made within six months after the making of the order for support or the disposition of any other application under subsection 1 in respect of the same order, except by leave of the court. Limitation on applications for review

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force. Existing orders

22. In or pending an application under section 18 or appearance to a notice under section 28, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support. Restraining orders

Statement
of financial
affairs

23.—(1) Where an application is made under section 18 or 21, each party shall file with the court and serve upon the other a statement verified by oath or statutory declaration disclosing particulars of financial information in the manner and form prescribed by the rules of the court.

Order for
sealing
statement

(2) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection 1 would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Absconding
respondent
or debtor

24. Where an application is made under section 18 or a notice is issued under section 28 and a judge of the court is satisfied that the respondent or debtor is about to leave Ontario, the judge may issue a warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

Provisional
orders

25.—(1) Where an application is made under section 18 or 21 in a provincial court (family division) or the Unified Family Court and,

- (a) the respondent in the application fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is outside the territorial jurisdiction of the court; and
- (c) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the statement of the financial affairs of the respondent required by section 23 and in place of a final order may make an order for support that is provisional only and the order has no effect until it is confirmed by the provincial court (family division) or the Unified Family Court in the locality in which the respondent resides.

Transmission
for hearing

(2) Where a provisional order is made under subsection 1, the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show
cause

(3) The court to which the documents and records are sent under subsection 2 shall cause them to be served upon

the respondent together with a notice to file with the court the statement of financial affairs required by section 23 and to appear and show cause why the provisional order should not be confirmed.

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence. Confirmation of order

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose. Adjournment for further evidence

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper. Where order not confirmed

(7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy. Certificates as evidence

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 19. Right of appeal

26.—(1) Where it appears to a court that,

Access to records

- (a) for the purpose of bringing an application under this Part; or
- (b) for the purpose of the enforcement of an order for support, custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts

of the proposed respondent or person against whom the order is made, the court may order any person or public agency to provide the court with such particulars of the address as are contained in the records in its custody and the person or agency shall provide to the court such particulars as it is able to provide.

Section
binds Crown

(2) This section binds the Crown in right of Ontario.

Enforcement
of orders by
family court
clerk

27.—(1) The clerk of the Unified Family Court or of a provincial court (family division), upon the request of a person entitled to support under an order for support or maintenance enforceable in Ontario or other persons or agency mentioned in subsection 3 of section 18 and upon the filing of such material as is prescribed by the rules of the court may enforce the order.

Powers of
court for
enforcement

(2) For the purposes of enforcing an order filed under subsection 1, a provincial court (family division) has the power to issue execution and garnishment in accordance with the rules of the court and section 145 of *The Small Claims Courts Act* and subsection 3 of section 4 of *The Creditors' Relief Act* apply to a garnishment issued by the provincial court (family division).

R.S.O. 1970,
cc. 439, 97

Crown
subject to
attachment
for support
R.S.O. 1970,
c. 365

(3) Notwithstanding section 25 of *The Proceedings Against the Crown Act*, an attachment under subsection 1 of section 30 and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance, may be issued against the Crown.

Examination
of debtor

28.—(1) Where there is default in payment under an order for support or maintenance, a clerk of the Unified Family Court or a provincial court (family division) may require the debtor, upon notice,

- (a) to file a statement of financial information referred to in section 23;
- (b) submit to an examination as to assets and means; and
- (c) appear before the court to explain the default.

Compelling
attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave Ontario without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

29.—(1) Where the debtor fails to satisfy the court that the default is owing to his or her inability to pay and where the court is satisfied that all other practicable means that are available under this Act for enforcing payment have been considered, the court may, Penalty for default

- (a) order imprisonment for a term of not more than ninety days to be served intermittently or as ordered by the court; or
- (b) make such other order as may be made upon summary conviction for an offence that is punishable by imprisonment.

(2) The order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order, including the performance of a community service order. Conditions of sentence

30.—(1) Where the court considers it appropriate in a proceeding under section 28, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court, and section 7 of *The Wages Act* does not apply. Attachment of wages

R.S.O. 1970,
c. 486

(2) Where an application is made under section 21, the court may discharge, vary or suspend any term of an order made under subsection 1. Variation of attachment

(3) An order under subsection 1 has priority over any other seizure or attachment of wages arising before or after the service of the order. Priority of order

31. Where the court considers it appropriate in a proceeding under section 28, the court may order the debtor to give security for the payment of support or may charge any property of the debtor with payment of an amount for the provision of necessities or preventing the dependant from becoming a public charge. Security for payment

32. Where a court orders security for the payment of support under this Part or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. Realization of security

Pledging
credit for
necessaries

33.—(1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability
for
necessaries
of minor

(2) Where a person is entitled to recover against a minor in respect of the provision of necessities for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery
between
persons
jointly
liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common
law
supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Order
restraining
harassment

34. Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

Custody of
children

35.—(1) Upon application, the court may order that either parent or any person have custody of or access to a child in accordance with the best interests of the child and may at any time alter, vary or discharge the order.

Court

(2) An application to alter, vary or discharge the order shall be made to the court that made the order or to a co-ordinate court in another part of Ontario.

Interim
orders

(3) Where an application is made under subsection 1, the court may make such interim order as the court considers appropriate.

Application
to orders
under
R.S.O. 1970,
c. 128

(4) This section applies to orders for custody or access made under *The Deserted Wives' and Children's Maintenance Act*.

Appeal
from
provincial
court (family
division)

36. An appeal lies from an order of the provincial court (family division) under this Part to the county or district court in the county or district in which the provincial court (family division) is situated.

37.—(1) In addition to its powers in respect of contempt, every provincial court (family division) may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not in any case exceed \$1,000 nor shall the imprisonment exceed ninety days.

Contempt
of orders of
provincial
court (family
division)

(2) An order for imprisonment under subsection 1 may be made conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently.

Conditions
of
imprison-
ment

PART III

MATRIMONIAL HOME

38. In this Part, “property” means real or personal property.

Interpre-
tation

39.—(1) Property in which a person has an interest and that is or has been occupied by the person and his or her spouse as their family residence is their matrimonial home.

Matrimonial
home

(2) Subsection 1 applies notwithstanding that its application results in more than one matrimonial home.

More
than one
matrimonial
home

(3) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to the occupation of a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection 1.

Ownership
of shares

(4) Where property that includes a matrimonial home is normally used for a purpose other than residential only, the matrimonial home is only such portion of the property as may reasonably be regarded as necessary to the use and enjoyment of the residence.

Residence
on farm-
land, etc.

40.—(1) A spouse is equally entitled to any right of possession of the other spouse in a matrimonial home.

Right to
possession

(2) Subject to an order of the court under this or any other Act, and subject to a separation agreement that provides otherwise, a right of a spouse to possession by virtue of subsection 1 ceases upon the spouse ceasing to be a spouse.

Termination
of right to
possession

Registered
designation
of
matrimonial
home

41.—(1) Both spouses may, by instrument in the form prescribed by the regulations, designate any property that is a matrimonial home and, upon the registration of the instrument and while there is a designation made by the spouses under this subsection that is not cancelled, any other property that would qualify as a matrimonial home under section 39 and that is not similarly designated ceases to be a matrimonial home.

Extent of
designation

(2) The property that is designated as a matrimonial home under subsection 1 may include any property contiguous to the matrimonial home that is described for the purpose in the instrument.

Cancellation
of
designation

(3) The designation of a matrimonial home under subsection 1 is cancelled upon the registration or deposit of,

- (a) an instrument in the form prescribed by the regulations executed by both spouses;
- (b) a decree absolute of divorce or judgment of nullity;
- (c) an order under section 45 cancelling the designation; or
- (d) proof of death of one of the spouses.

Effect of
cancellation

(4) Upon the cancellation of the designation of a property under subsection 3, the property ceases to be a matrimonial home under section 39.

Revival
of
matrimonial
homes

(5) Upon there ceasing to be a designation under subsection 1, section 39 applies in respect of property that is a matrimonial home.

Alienation of
matrimonial
home

42.—(1) No spouse shall dispose of or encumber any interest in a matrimonial home unless,

- (a) the other spouse joins in the instrument or consents to the transaction;
- (b) the other spouse has released all rights under this Part by a separation agreement;
- (c) the transaction is authorized by court order or an order has been made releasing the property as a matrimonial home; or
- (d) the property is not designated as a matrimonial home under section 41 and an instrument desig-

nating another property as a matrimonial home of the spouses is registered under section 41 and not cancelled.

(2) Where a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection 1, the transaction may be set aside on an application under section 44 unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was at the time of the disposition, agreement or encumbrance a matrimonial home.

(3) For the purposes of subsection 2, an affidavit of the person making the disposition or encumbrance,

Setting
aside
transaction

Proof that
property
not a
matrimonial
home

(a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;

(b) verifying that the property has never been occupied by the person and his or her spouse as their matrimonial home;

(c) where the property is not designated under section 41, verifying that an instrument designating another property as a matrimonial home of the person and his or her spouse is registered under section 41 and not cancelled; or

(d) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had actual notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home.

(4) This section does not apply to the acquisition of an interest in property by operation of law or of a lien under section 18 of *The Legal Aid Act*.

Liens
arising by
operation
of law
R.S.O. 1970,
c. 239

43.—(1) Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession by virtue of section 40 has the same right of redemption or relief against forfeiture as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

Right of
redemption
and to
notice

Service of
notice

(2) Any notice to which a spouse is entitled by virtue of subsection 1 shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the person to whom notice is to be given at his or her usual or last known address or, where none, the address of the matrimonial home, and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing.

Effect of
payments
made by
spouse

(3) Where a spouse makes any payment by way of or on account of redemption or relief against forfeiture under the right conferred by subsection 1, the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

Continuation
of
proceedings
in absence
of spouse

(4) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars of a spouse entitled under subsection 1 for the purposes of the proceeding, and a notice given under subsection 2 is not responded to, the proceeding may continue in the absence of the spouse and without regard to the interest of the spouse and any final order in the proceeding terminates the rights of the spouse under this section.

Powers of
court
respecting
alienation

44. The court may, on the application of a spouse or person having an interest in property, by order,

- (a) determine whether or not property is the matrimonial home and, if so, its extent;
- (b) authorize the disposition or encumbrance of the matrimonial home where the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,

subject to such terms and conditions including provision of other comparable accommodation or payment in place thereof as the court considers appropriate;

- (c) dispense with any notice required to be given under section 43; and

- (d) direct the setting aside of any transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 1 of section 42 and the revesting of the interest or any part of the interest upon such terms and subject to such conditions as the court considers appropriate.

45.—(1) Notwithstanding the ownership of a matrimonial home and its contents, and notwithstanding section 40, the court on application may by order, Order for possession of matrimonial home

- (a) direct that one spouse be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs and release any other property that is a matrimonial home from the application of this Part;
- (b) direct a spouse to whom exclusive possession of a matrimonial home is given to pay such periodic payments to the other spouse as is prescribed in the order;
- (c) direct that the contents of a matrimonial home, or any part thereof, remain in the home for the use of the person given possession;
- (d) fix the obligation to repair and maintain the matrimonial home or to pay other liabilities arising in respect thereof;
- (e) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right to exclusive possession of the other spouse as ordered; and
- (f) where a false affidavit is given under subsection 3 of section 42, direct,
 - (i) the person who swore the false affidavit, or
 - (ii) any person who knew at the time it was sworn that the affidavit was false and who thereafter conveyed the property,

to substitute other real property for the matrimonial home or direct such person to set aside money or security to stand in place thereof subject to such terms and conditions as the court considers appropriate.

(2) An order may be made under subsection 1 for temporary relief or pending the bringing or disposition of another application under this Act. Temporary possession

Order
where no
property
interest

(3) An order under subsection 1 for exclusive possession may be made only if, in the opinion of the court, other provision for shelter is not adequate in the circumstances or it is in the best interests of a child to do so.

Limitation
on
jurisdiction
of family
court

(4) A provincial court (family division) shall not make an order under clause *b* or *d* of section 44 or clause *e* or *f* of subsection 1.

Variation
of possessory
order

46.—(1) Upon the application of a person named in an order made under clause *a*, *b*, *c* or *d* of subsection 1 of section 45 or the personal representative of such person and where the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order.

Variation of
conditions
of sale

(2) Upon the application of a person who is subject to terms and conditions imposed in an order made under clause *b* of section 44 or his personal representative and where the court is satisfied that the terms and conditions are no longer appropriate, the court may discharge, vary or suspend the terms and conditions.

Interim
order for
preservation
of property

47. In an application under this Part, the court may make such interim order as it considers necessary for the delivering up, safekeeping and preservation of the matrimonial home or its contents.

Registration
of order
R.S.O. 1970,
cc. 409, 234

48. An order made under this Part is registrable against land under *The Registry Act* and *The Land Titles Act*.

Application
of Part

49.—(1) This Part applies to matrimonial homes that are situated in Ontario.

Idem

(2) This Part applies notwithstanding that,

- (a) the spouses entered into the marriage before this Part comes into force;
- (b) the matrimonial home was acquired before this Part comes into force; or
- (c) a proceeding to determine the rights as between spouses in respect of property has been commenced or adjudicated before this Part comes into force.

PART IV

DOMESTIC CONTRACTS

50. In this Part,

Interpre-
tation

- (a) “cohabitation agreement” means an agreement entered into under section 52;
- (b) “domestic contract” means a marriage contract, separation agreement or cohabitation agreement;
- (c) “marriage contract” means an agreement entered into under section 51;
- (d) “separation agreement” means an agreement entered into under section 53.

51.—(1) Two persons may enter into an agreement, before their marriage or during their marriage while cohabiting, in which they agree on their respective rights and obligations under the marriage or upon separation or the annulment or dissolution of the marriage or upon death, including,

Marriage
contracts

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

(2) Any provision in a marriage contract purporting to limit the rights of a spouse under Part III in respect of a matrimonial home is void.

Rights re
matrimonial
home
excepted

52.—(1) A man and a woman who are cohabiting and not married to one another may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or upon ceasing to cohabit or death, including,

Cohabitation
agreements

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and

(d) any other matter in the settlement of their affairs.

Effect of
marriage on
agreement

(2) Where the parties to an agreement entered into under subsection 1 subsequently marry, the agreement shall be deemed to be a marriage contract.

Separation
agreements

53. A man and woman who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

(a) ownership in or division of property;

(b) support obligations;

(c) the right to direct the education and moral training of their children;

(d) the right to custody of and access to their children; and

(e) any other matter in the settlement of their affairs.

Form of
contract

54.—(1) A domestic contract and any agreement to amend or rescind a domestic contract are void unless made in writing and signed by the persons to be bound and witnessed.

Capacity
of minor

(2) A minor who has capacity to contract marriage has capacity to enter into a marriage contract or separation agreement that is approved by the court, whether the approval is given before or after the contract is entered into.

Agreement
on behalf of
mentally
incompetent

(3) The committee of a person who is mentally incompetent or, if the committee is the spouse of such person or, if there is no committee, the Public Trustee may, subject to the approval of the court, enter into a domestic contract or give any waiver or consent under this Act on behalf of the mentally incompetent person.

Contracts
subject
to best
interests
of child

55.—(1) In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.

Dum casta
clauses

(2) A provision in a separation agreement or a provision in a marriage contract to take effect on separation whereby any right of a spouse is dependent upon remaining chaste is void, but this subsection shall not be construed to affect a contingency upon remarriage or cohabitation with another.

(3) A provision in a separation agreement made before ^{Idem} this section comes into force whereby any right of a spouse is dependent upon remaining chaste shall be given effect as a contingency upon remarriage or cohabitation with another.

56. Where a domestic contract provides that specific gifts ^{Rights of donors of gifts} made to one or both parties are not disposable or encumberable without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of the enforcement or any amendment of the provision.

57. The manner and formalities of making a domestic contract and its essential validity and effect are governed by ^{Contracts made outside Ontario} the proper law of the contract, except that,

- (a) a contract for which the proper law is that of a jurisdiction other than Ontario, is also valid and enforceable in Ontario if entered into in accordance with the internal law of Ontario;
- (b) subsection 4 of section 18 and section 55 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and
- (c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not valid or enforceable in Ontario.

58.—(1) Where a man and a woman who are not spouses ^{Paternity agreements} enter into an agreement for,

- (a) the payment of the expenses of prenatal care and birth in respect of a child;
- (b) support of a child; or
- (c) burial expenses of the child or mother,

on the application of a party to the agreement or a children's aid society made to a provincial court (family division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part II applies to the order in the same manner as if it were an order for support made under that Part.

(2) Where an application is made under subsection 1 ^{1 Absconding respondent} and a judge of the court is satisfied that the respondent is about to leave Ontario, the judge may issue a warrant in the

form prescribed by the rules of the court for the arrest of the respondent.

Capacity of
a minor

(3) A minor who has capacity to contract marriage has capacity to enter into an agreement under subsection 1 that is approved by the court, whether the approval is given before or after the agreement is entered into.

Application
to
pre-existing
agreements

(4) This section applies to agreements referred to in subsection 1 that were made before this Part comes into force.

Application
of Act to
pre-existing
contracts

59.—(1) A separation agreement or marriage contract validly made before this Part comes into force shall be deemed to be a domestic contract for the purposes of this Act.

Contracts
entered into
before
Part comes
into force

(2) Where a domestic contract is entered into in accordance with this Part before this Part comes into force and,

(a) the contract or any part would be valid if entered into after this Part comes into force; and

(b) the contract or part is entered into in contemplation of the coming into force of this Part,

the contract or part is not invalid for the reason only that it was entered into before this Part comes into force.

Idem

(3) Where pursuant to an understanding or agreement entered into before this Part comes into force by spouses who are living separate and apart, property is transferred, between them, the transfer is effective as if made pursuant to a domestic contract.

PART V

DEPENDANTS' CLAIM FOR DAMAGES

Right of
dependants
to sue in
tort

60.—(1) Where a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part II, children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1970, c. 164, s. 3 (1), *amended*.

Damages in
case of
injury

(2) The damages recoverable in a claim under subsection 1 may include,

- (a) actual out-of-pocket expenses reasonably incurred for the benefit of the injured person;
- (b) a reasonable allowance for travel expenses actually incurred in visiting the injured person during his treatment or recovery;
- (c) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the injured person, a reasonable allowance for loss of income or the value of the services; and
- (d) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the injured person if the injury had not occurred.

(3) In an action under subsection 1, the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. *New.* Contributory negligence

(4) Not more than one action lies under subsection 1 for and in respect of the same occurrence, and no such action shall be brought after the expiration of two years from the time the cause of action arose. R.S.O. 1970, c. 164, s. 5; 1975, c. 38, s. 1. One action and limitation of actions

61.—(1) An action under subsection 1 of section 60 in respect of a person who is killed shall be commenced by and in the name of the executor or administrator of the deceased for the benefit of the persons entitled to recover under subsection 1 of section 60. R.S.O. 1970, c. 164, s. 3, *part, amended.* Executor to sue where death

(2) If there is no executor or administrator of the deceased, or if there is an executor or administrator and no such action is, within six months after the death of the deceased, brought by the executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator. When action may be brought by persons beneficially interested

(3) Every action so brought is for the benefit of the same persons and is subject to the same regulations and procedure, as nearly as may be, as if it were brought by the executor or administrator. R.S.O. 1970, c. 164, s. 7. Regulations and procedure in such case

62.—(1) Where an action is commenced under section 60, the plaintiff shall, in his statement of claim, name and join the claim of any other person who is entitled to main- Joining claims

tain an action under section 60 in respect of the same injury or death and thereupon such person becomes a party to the action.

Affidavit

(2) A person who commences an action under section 60 shall file with the statement of claim an affidavit stating that to the best of his knowledge, information and belief the persons named in the statement of claim are the only persons who are entitled or claim to be entitled to damages under section 60. R.S.O. 1970, c. 164, s. 6 (1, 2), *amended*.

How money
may be paid
into court

63.—(1) The defendant may pay into court one sum of money as compensation for his fault or neglect to all persons entitled to compensation without specifying the shares into which it is to be divided. R.S.O. 1970, c. 164, s. 4.

Apportion-
ment

(2) Where the compensation has not been otherwise apportioned, a judge may, upon application, apportion it among the persons entitled.

When pay-
ment may
be
postponed

(3) The judge may in his discretion postpone the distribution of money to which minors are entitled and may direct payment from the undivided fund. R.S.O. 1970, c. 164, s. 8.

Assessment
of damages,
insurance

64.—(1) In assessing the damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance.

Funeral
expenses

(2) For the purposes of this Part, damages may be awarded for reasonable expenses actually incurred for the burial of the person in respect of whose death the action is brought. R.S.O. 1970, c. 164, s. 3 (2, 3), *amended*.

PART VI

AMENDMENTS TO THE COMMON LAW AND STATUTE LAW

Unity of legal
personality
abolished

65.—(1) For all purposes of the law of Ontario, a married man has a legal personality that is independent, separate and distinct from that of his wife and a married woman has a legal personality that is independent, separate and distinct from that of her husband.

Capacity of
married
person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if such person were an unmarried person. 1975, c. 41, s. 1 (1, 2).

Idem

(3) Without limiting the generality of subsections 1 and 2,

(a) each of the parties to a marriage has the like right of action in tort against the other as if they were not married;

(b) a married woman is capable of acting as guardian *ad litem* or next friend as if she were an unmarried woman; 1975, c. 41, s. 1 (3), *part.*

(c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

(4) The purpose of subsections 1 and 2 is to make the same law apply, and apply equally, to married men and married women and to remove any difference therein resulting from any common law rule or doctrine, and subsections 1 and 2 shall be so construed. 1975, c. 41, s. 1 (4). Purpose
of subss.
1, 2

66. No person shall be disentitled from bringing an action or other proceeding against another for the reason only that they stand in the relationship of parent and child. 1975, c. 41, s. 3. Actions
between
parent and
child

67. No person shall be disentitled from recovering damages in respect of injuries incurred for the reason only that the injuries were incurred before his birth. 1975, c. 41, s. 4. Recovery for
prenatal
injuries

68.—(1) Subject to subsection 2, a child who is a minor, Domicile
of minors

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause *a* or *b*; or

(d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause *c*.

(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age. Idem

69.—(1) No action shall be brought for criminal conversation or for any damages resulting therefrom or from adultery. Criminal
conversation
abolished

Enticement and harbouring of spouse abolished	(2) No action shall be brought by a married person for the enticement or harbouring of the spouse of such person or for any damages resulting therefrom.
Loss of consortium abolished	(3) No action shall be brought by a married person for the loss of the consortium of his or her spouse or for any damages resulting therefrom.
Enticement, harbouring, seduction, loss of services of child abolished	(4) No action shall be brought by a parent for the enticement, harbouring, seduction or loss of services of his or her child or for any damages resulting therefrom.
R.S.O. 1970, c. 428; 1971, c. 98, Sched., par. 30, repealed	(5) <i>The Seduction Act</i> , being chapter 428 of the Revised Statutes of Ontario, 1970 and paragraph 30 of the Schedule to <i>The Age of Majority and Accountability Act, 1971</i> , being chapter 98, are repealed.
R.S.O. 1970, c. 228, s. 59, amended	(6) Section 59 of <i>The Judicature Act</i> , being chapter 228 of the Revised Statutes of Ontario, 1970, is amended by striking out "criminal conversation, seduction" in the first line.
Dower abolished	70. —(1) The common law right of a widow to dower is hereby abolished.
R.S.O. 1970, c. 135; 1971, c. 98, Sched., par. 11, repealed	(2) <i>The Dower Act</i> , being chapter 135 of the Revised Statutes of Ontario, 1970, and paragraph 11 of the Schedule to <i>The Age of Majority and Accountability Act, 1971</i> , being chapter 98, are repealed.
R.S.O. 1970, c. 152, s. 28 (2), repealed	(3) Subsection 2 of section 28 of <i>The Execution Act</i> , being chapter 152 of the Revised Statutes of Ontario, 1970, is repealed.
Vested right to dower	(4) Subsections 1, 2 and 3 do not apply in respect of a right to dower that has vested before subsections 1 and 2 come into force.
Refund of indemnity held by accountant for dower	(5) Where money has been paid into court as an indemnity in respect of a right to dower that has not vested before this section comes into force, the husband of the person in respect of whose dower right the money was paid into court is entitled to be paid the money upon application to the accountant of the court, without order.
Alimony abolished	71. —(1) The right of a married woman to alimony under any law existing before this section comes into force is hereby abolished.

(2) Where an action for alimony is commenced before subsection 1 comes into force and no evidence has been heard in the action before this Act comes into force, other than in respect of an interim order, the action shall be deemed to be an application under Part II subject to such directions as the court considers appropriate.

Continuation
of action
commenced

72. This Act applies to persons whose marriage was actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid.

Polygamous
marriages

73.—(1) Subsection 4 of section 27 of *The Child Welfare Act*, being chapter 64 of the Revised Statutes of Ontario, 1970, is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "*Part II of The Family Law Reform Act, 1978*".

R.S.O. 1970,
c. 64, s. 27 (4),
amended

(2) Part III of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, Schedule, paragraph 6, subparagraph ii, 1972, chapter 109, section 6, 1973, chapter 75, section 5 and 1975, chapter 1, sections 25, 26, 27 and 28, is repealed.

Part III,
repealed

74. *The Children's Maintenance Act*, being chapter 67 of the Revised Statutes of Ontario, 1970 and subsection 2 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed.

R.S.O. 1970,
c. 67;
1971, c. 98,
s. 18 (2),
repealed

75. Section 4 of *The Creditors Relief Act*, being chapter 97 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

R.S.O. 1970,
c. 97, s. 4 (9),
amended

(9) This section does not apply to an attachment made under section 30 of *The Family Law Reform Act*, 1978.

1978, c. ...
exempted

76. *The Deserted Wives' and Children's Maintenance Act*, being chapter 128 of the Revised Statutes of Ontario, 1970, subsection 1 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, and *The Deserted Wives' and Children's Maintenance Amendment Act*, 1973, being chapter 133, are repealed.

R.S.O. 1970,
c. 128,
1971, c. 98,
s. 18 (1);
1973, c. 133,
repealed

77. Section 9 of *The Employment Standards Act*, 1974, being chapter 112, is repealed and the following substituted therefor:

1974, c. 122,
s. 9,
re-enacted

9. No employer shall dismiss or suspend an employee on the ground that garnishment proceedings are or

Garnish-
ment or
attachment
of wages

1978, c. ... may be taken against the employee or that an attachment order under section 30 of *The Family Law Reform Act, 1978* has been or may be made against the employee.

1975, c. 41.
ss. 1-4,
repealed **78.** Sections 1, 2, 3 and 4 of *The Family Law Reform Act, 1975*, being chapter 41, are repealed.

R.S.O. 1970.
c. 164;
1973, c. 16;
1975, c. 38,
repealed **79.** *The Fatal Accidents Act*, being chapter 164 of the Revised Statutes of Ontario, 1970, *The Fatal Accidents Amendment Act, 1973*, being chapter 16, and *The Fatal Accidents Amendment Act, 1975*, being chapter 38, are repealed.

R.S.O. 1970.
c. 222,
amended **80.**—(1) *The Infants Act*, being chapter 222 of the Revised Statutes of Ontario, 1970, is amended by striking out,

(a) subsection 4, subsection 4a, as enacted by the Statutes of Ontario, 1971, chapter 98, section 18, and subsection 5 of section 1;

(b) subsection 2 of section 2;

(c) sections 10, 13 and 14; and

(d) section 15, as re-enacted by the Statutes of Ontario, 1971, chapter 98, section 16.

1971, c. 98.
s. 18 (3),
Sched., par. 14,
subpar. i,
repealed (2) *The Age of Majority and Accountability Act, 1971*, being chapter 98, is amended by striking out,

(a) section 16;

(b) subsection 3 of section 18; and

(c) subparagraph i of paragraph 14 of the Schedule.

R.S.O. 1970.
c. 228, s. 81,
repealed **81.**—(1) Subject to subsection 2, section 81 of *The Judicature Act*, being chapter 228 of the Revised Statutes of Ontario, 1970, is repealed.

Continu-
ance for
existing
judgments (2) The provision repealed by subsection 1 remains in force in respect of a judgment for alimony in an action commenced before this section comes into force.

s. 118 (3),
amended (3) Subsection 3 of section 118 of the said Act, as amended by the Statutes of Ontario, 1975, chapter 30, section 7, is further amended by striking out "alimony or for the main-

tenance or custody of children is joined with" in the amendment of 1975 and inserting in lieu thereof "other relief is joined in".

82. Sections 1 and 12 of *The Married Women's Property Act*, being chapter 262 of the Revised Statutes of Ontario, 1970, are repealed. R.S.O. 1970,
c. 262, ss. 1, 12,
repealed

83. Sections 1, 2, 3, 4 and 5, subsection 6 of section 6 and section 8 of *The Matrimonial Causes Act*, being chapter 265 of the Revised Statutes of Ontario, 1970 and subsection 4 of section 18 of *The Age of Majority and Accountability Act*, 1971, being chapter 98, are repealed. R.S.O. 1970,
c. 265, ss. 1-5,
6 (6), 8;
1971, c. 98,
s. 18 (4),
repealed

84. *The Parents' Maintenance Act*, being chapter 336 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970,
c. 336,
repealed

85. Section 24 of *The Pension Benefits Act*, being chapter 342 of the Revised Statutes of Ontario, 1970 is amended by adding thereto the following subsection: R.S.O. 1970,
c. 342,
s. 24,
amended

- (2) Subsection 1 does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under *The Family Law Reform Act*, 1978. Application
of subs. 1

1978, c. ...

86.—(1) Subject to subsection 2, section 25 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, is repealed. R.S.O. 1970,
c. 369, s. 25,
repealed

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned. Transition
for existing
orders
R.S.O. 1970,
c. 369

87.—(1) *The Reciprocal Enforcement of Maintenance Orders Act*, being chapter 403 of the Revised Statutes of Ontario, 1970, is amended by striking out "summons" in each case where it appears and inserting in lieu thereof "notice of application". R.S.O. 1970,
c. 403,
amended

(2) Subsection 3 of section 2 of the said Act is amended by striking out "*The Deserted Wives' and Children's Maintenance Act*" and inserting in lieu thereof "Part II of *The Family Law Reform Act*, 1978". Idem
s. 3 (2),
amended

88. Section 4 of *The Statute of Frauds*, being chapter 444 of the Revised Statutes of Ontario, 1970, is amended by R.S.O. 1970,
c. 444, s. 4,
amended

striking out “any agreement made upon consideration of marriage, or upon” in the fifth and sixth lines.

Application
of ss. 69, 73, 74,
76, 79, 80, 82,
83 and 84

89. Sections 69, 73, 74, 76, 79, 80, 82, 83 and 84 apply in all cases when they come into force except in cases where an action or proceeding was commenced under the abolished, repealed or amended provision before that date.

GENERAL

Regulations

90. The Lieutenant Governor in Council may make regulations respecting any matter required to be or referred to as prescribed by the regulations.

Commence-
ment

91. This Act comes into force on the 31st day of March, 1978.

Short title

92. The short title of this Act is *The Family Law Reform Act, 1978*.

